

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 00-10927-JMD
Chapter 7

Bruce J. Blais and
Cynthia A. Blais,
Debtors

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MEMORANDUM OPINION

I. INTRODUCTION

On April 25, 2001, the Court held a hearing regarding a Motion to Reopen Estate to Vacate Discharge if Necessary, to Permit Filing of Reaffirmation Agreement (Doc. No. 10) (the “Motion”), filed by Bruce and Cynthia Blais (the “Debtors”). After hearing from the parties, the Court partially denied the Motion on the grounds that it was not necessary to vacate the discharge order. This opinion reflects the Court’s reasons, as stated on the record at the April 25, 2001 hearing, for partially denying the Debtors’ Motion.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court

for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

The Debtors filed a joint Chapter 7 petition on March 30, 2000, and the first meeting of creditors was held on May 8, 2000. The trustee filed his report of no distribution on May 10, 2000. See Doc. No. 6. The Reaffirmation Agreement was signed by the Debtor, Bruce Blais (“Blais”), on June 26, 2000. Blais’ attorney signed a Declaration of Debtor’s Attorney on July 6, 2000. Snap-on Credit LLC (“Snap-on”) signed the Reaffirmation Agreement on July 12, 2000 and filed it with the Court on July 17, 2000. See Doc. No. 8. On July 12, 2000, the Debtors received their discharge (Doc. No. 7) and the case was closed on July 20, 2000 (Doc. No. 9). On March 9, 2001, the Debtors filed the Motion requesting the Court to reopen the above-captioned Chapter 7 bankruptcy case in order to vacate the discharge order and obtain court approval of the Reaffirmation Agreement between Blais and Snap-on. See Doc. No. 10. On March 14, 2001, the Court partially granted the Motion by entering an order reopening the case and ordering the Debtors and Snap-on to appear and show cause why it was necessary to vacate the discharge order. See Doc. No. 11.

III. DISCUSSION

Section 524(c) of the Bankruptcy Code provides that when a debtor is represented by counsel in the course of negotiating a reaffirmation agreement, the agreement between the creditor and the debtor, which is based upon a debt that is dischargeable in a bankruptcy proceeding, is enforceable only if:

- (a) the reaffirmation agreement is made before the granting of the discharge,
- (b) the agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the Court, whichever is later,

- (c) the agreement contains a clear and conspicuous statement advising the debtor that such agreement is not required under applicable law or any other agreement,
- (d) the agreement has been filed with the court,
- (e) a declaration of the debtor's attorney stating that the agreement is the fully informed and voluntary act of the debtor, does not impose an undue hardship on the debtor, and the attorney has fully advised the debtor of the legal effect and consequences of signing the agreement and subsequent defaults, is filed with the agreement, and
- (f) the debtor has not rescinded the agreement within the applicable time frame.

Section 524(d) of the Bankruptcy Code does not require a hearing on approval of a reaffirmation agreement if the debtor was represented by counsel in the negotiation of the agreement.

Based upon a review of the Reaffirmation Agreement as filed with the Court (Doc. No. 8), the record in this case, and the statements by counsel for the parties at the hearing on April 25, 2001, the Court finds:

- (a) The Reaffirmation Agreement was signed by Blais on June 26, 2000 and executed by Snap-on on July 12, 2000.
- (b) The Reaffirmation Agreement contains a statement regarding Blais' right of rescission.
- (c) The Reaffirmation Agreement contains a statement regarding the absence of any requirement that Blais enter into the agreement.
- (d) The Reaffirmation Agreement was filed with the Court on July 17, 2000.
- (e) A declaration by Blais' attorney dated July 6, 2000 was filed with the Reaffirmation Agreement.
- (f) The case was closed on July 20, 2000.
- (g) Blais has not rescinded the Reaffirmation Agreement.

At the hearing the parties indicated that they were concerned by the fact that the Reaffirmation Agreement was filed after the entry of the discharge order. Blais and Snap-on both indicated a desire to make the Reaffirmation Agreement binding between them.

Section 524(c) contains no requirement that a reaffirmation agreement be filed with the Court prior to a debtor receiving his discharge. The Bankruptcy Code simply requires that the agreement be "made"

prior to the granting of a debtor's discharge. In this particular case the agreement was made and signed by both Blais and Snap-on prior to the Debtors' receiving their discharge. The Reaffirmation Agreement was signed by Blais on June 26, 2000, by Snap-on on July 12, 2000, and the Debtors received their discharge on July 12, 2000. Because the Reaffirmation Agreement otherwise complies with the requirements of section 524(c), the Reaffirmation Agreement is enforceable as filed. Accordingly, there is no need to vacate the Debtors' discharge order.¹

IV. CONCLUSION

The Reaffirmation Agreement between Blais and Snap-on is an enforceable agreement under section 524(c) of the Bankruptcy Code. The Court has entered an order denying the Debtors' Motion to the extent it requested that the discharge order be vacated. See Doc. No. 13. The Debtors' case may be closed after May 10, 2001.

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DATED this 26th day of April, 2001, at Manchester, New Hampshire.

J. Michael Deasy
Bankruptcy Judge

¹ As Blais and Snap-on had both signed the Reaffirmation Agreement prior to the Debtors' receiving their discharge the Court does not find it necessary to rule upon whether the agreement would have been "made," and thereby enforceable, if both parties had not signed the Reaffirmation Agreement prior to the Debtors' receiving their discharge. See, e.g., In re Lebeau, 247 B.R. 537 (Bankr. M.D. Fla. 2000).